IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3552 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SANTABEN WIDOW OF SAKRAJI - KHODAJI RAVAL. - Petitioner(s)
Versus
STATE OF GUJARAT. THRO'SECRETARY & 2 - Respondent(s)

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Appearance :

MR BA SHIGROHA for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
MS.NISHA PARIKH AGP for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 17/07/2007

ORAL JUDGMENT

1. Invoking Article 226 of the Constitution, the petitioner has sought a writ of *habeas corpus* or any other appropriate directions to quash the

order dated 23.11.2006 of her detention as a bootlegger under the provisions of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (“P.A.S.A.” for short).

2. Learned counsel Ms.Banna Dutta, appearing for the petitioner, has relied upon the solitary ground of non-supply of the document relied upon in the impugned order by the detaining authority. It was submitted that the grounds of detention supplied to the petitioner under the provisions of Section 9 of the P.A.S.A. clearly refer to the fact of the petitioner having been released on bail in three criminal cases under the Prohibition Act and also relied upon the report related to the petitioner's applications for bail and the orders made thereon. The Detaining Authority has expressly relied, for arriving at his subjective satisfaction, upon the facts of registration of three offences against the petitioner and her being released on bail due to which she was considered to be likely to continue to indulge in the anti-social activity. It was pointed out from the list of documents supplied to the petitioner along with the grounds of detention that only the last application for bail and the order of bail in the last case registered against the petitioner were included in the list and, therefore, a grievance was made that relevant documents required for making an

effective representation were not supplied to the petitioner which resulted into violation of the procedural safeguard provided under Article 22 of the Constitution. Learned counsel Ms.Dutta relied upon the following observations made by the Hon'ble Supreme Court in **M.Ahamedkutty V/s. Union of India and another [(1990)2 SCC 1];**

> “21.....In the instant case though the order of detention ex facie did not mention of the detenu having been in jail, in paragraph 3 of the grounds of detention it was said that he was arrested by the Superintendent (Intelligence) Air Customs, Trivandrum on January 31, 1988 and he was produced before the Additional Chief Judicial Magistrate (Economic Offences), Ernakulam the same day. It was clearly said: “You were remanded to judicial custody and you were subsequently released on bail.” From the records it appears that the bail application and the bail order were furnished to the detaining authority on his enquiry. It cannot, therefore, be said that the detaining authority did not consider or rely on them. It is difficult, therefore, to accept the submission of Mr.Kunhikannan that those were not relied on by the detaining

authority. The bail application contained the grounds for bail including that he had been falsely implicated as an accused in the case at the instance of persons who were inimically disposed towards him, and the bail order contained the conditions subject to which the bail was granted including that the accused, if released on bail, would report to the Superintendent (Intelligence) Air Customs, Trivandrum on every Wednesday until further order, and that “he will not change his residence without prior permission of court to February 25, 1988”. This being the position in law, and non-supply of the bail application and the bail order having been apparent, the legal consequence is bound to follow.

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“27. Considering the facts in the instant case, the bail application and the bail order were vital materials for consideration. If those were not

considered the satisfaction of the detaining authority itself would have been impaired, and if those had been considered, they would be documents relied on by the detaining authority though not specifically mentioned in the annexure to the order of detention and those ought to have formed part of the documents supplied to the detenu with the grounds of detention and without them the grounds themselves could not be said to have been complete. We have, therefore, no alternative but to hold that it amounted to denial of the detenu's right to make an effective representation and that it resulted in violation of Article 22(5) of the Constitution of India rendering the continued detention of the detenu illegal and entitling the detenu to be set at liberty in this case."

3. Learned A.G.P. Ms.Nisha Parikh, appearing for the respondent, relied upon the repeated statements made by the detaining authority in his affidavit-in-reply to the effect that all relevant and vital materials which have a bearing on the aspect of the matter have been placed before him by sponsoring authority and copies of all those documents which had been referred to and relied upon by him for passing order of

detention were supplied to her along with the grounds of detention. As for the bail applications and orders in the two prohibition cases registered against the petitioner, it was submitted by her that, despite best efforts, those documents were not available and could not be even obtained from the Court, according to the report which was placed on record and supplied to the petitioner.

4. However, non-availability of the documents with the detaining authority or the sponsoring authority can hardly be a justification for non-compliance with the provisions of Article 22, particularly in view of the above observations of the Hon'ble Apex Court. It cannot be gainsaid that the fact of the petitioner being repeatedly released on bail was relevant and would have necessarily weighed with the detaining authority in arriving at the subjective satisfaction. Therefore, non-supply of relevant documents in that regard entitles the petitioner to be released and her continuous detention under the impugned order cannot be sustained.

5. Therefore, the petition is allowed, the impugned order dated 23.11.2006 of respondent No.2 is set aside and the petitioner is ordered to be released forthwith, if she is not required to be kept in jail for any other purpose. Rule is made absolute with no order as to costs.

(D.H.WAGHELA, J.)

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